

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 25211
[Redacted],)	
)	
Petitioner.)	DECISION
_____)	

On April 20, 2012, the staff of the Sales, Use, and Miscellaneous Tax Audit Bureau (Bureau) of the Idaho State Tax Commission (Commission) issued a Notice of Deficiency Determination (Notice) to [Redacted] (taxpayer) proposing Greater Boise Auditorium District tax and interest for the period March 1, 2009, through February 29, 2012, in the total amount of \$583. For the reasons that follow, the Commission upholds the audit findings, with adjustments made by the auditor in the taxpayer’s favor.

On June 12, 2012, the taxpayer filed a timely appeal and petition for redetermination of the Notice. The Commission sent a hearing rights letter on September 20, 2012. As of the date of this decision, the taxpayer has not replied.

Background and Relevant Tax Law

The taxpayer operates both [Redacted] under one business name. The [Redacted] but the two are proximate and operate as a single entity. The combined business has one of each of the following permits, enabling it to collect and remit relevant taxes: sales, Travel and Convention, and Greater Boise Auditorium District.

According to the auditor, the taxpayer did not collect Greater Boise Auditorium District tax on the separately stated rental of a basement-level room in the [Redacted].

The Greater Boise Auditorium District tax is imposed and collected for the following purpose and under the authority of this statute, excerpted in relevant part:

Hotel/motel room sales tax. -- The board [of an Auditorium District] shall have power and authority to levy a sales tax of not to exceed five percent (5%) of the receipts derived by hotels and motels within the district from the furnishing of hotel and motel rooms (Idaho Code § 67-4917B).

With respect to taxable charges, the following Hotel/Motel Room and Campground Sales Tax Administrative Rule states:

Hotel or Motel Defined. The words hotel or motel means any person, partnership, corporation, trustee, receiver, or other association, regularly engaged in the business of furnishing rooms for use or occupancy, whether personal or commercial, in return for a consideration or which holds itself out as being regularly engaged in such business.

a. Furnishing rooms for a consideration includes rooms provided for personal occupancy and rooms provided for meeting, convention, or other commercial purposes. (IDAPA 35.01.06.010.02.a).

Further, the rule referenced above includes the following:

Rooms Let for Purposes Other Than Sleeping. The statewide Travel and Convention tax applies only to rooms let to an individual as a place to sleep. The tax does not apply to rooms let only for other purposes, such as for meetings. However, both the state sales tax and the Greater Boise Auditorium District tax apply to rooms let by a hotel or motel for purposes other than sleeping (IDAPA 35.01.06.016.04.).

The taxpayer's terminology for the charges held by the auditor are "room fees," which prompted the auditor to impose a Greater Boise Auditorium tax on those charges. The taxpayer counters that it mischaracterized the charges and should have referred to them as "banquet charges," because the amount is intended to offset the need for additional linen and bussers to set up the dining area.

The taxpayer's web site includes images of what appear to be brochures or flyers if they were printed. One of the images is entitled "room options" and includes a line drawing and

description of a basement-level room suitable for 12 to 30 people. The Commission concludes that separately stated charges for this room are subject to the Greater Boise Auditorium District tax based on the previously cited tax code and administrative rule.

The taxpayer alternatively argues that because the hotel and the restaurant are not combined structures, charges for the use of a room in the restaurant for a purpose other than sleeping should not be subject to the Greater Boise Auditorium District tax. However, the Commission notes that the tax code makes no distinction based on whether the restaurant and hotel structures are physically attached.

The previously cited administrative rule refers to a business that furnishes rooms for use or occupancy. The Commission believes that since the two business segments are treated as one by the taxpayer for income and trust fund taxes (i.e., taxes collected by the business from its customers for remittance to the State of Idaho) it is reasonable to view the two structures together as a unified business offering restaurant, banquet and hotel services.

The Taxpayer did not provide evidence adequate to establish that the amount asserted in the Notice is incorrect. As a result, the Commission will uphold the Notice. A determination of the Commission is presumed to be correct (Albertson's, Inc. v. State, Dept. of Revenue, 106 Idaho 810, 814, 683 P.2d 846, 850 1984) and the burden is on the taxpayer to show that the deficiency is erroneous (Parsons v. Idaho State Tax Commission, 110 Idaho 572, 574-575 n.2 Ct. App. 1986.)

Absent information to the contrary, the Commission finds the deficiency prepared by the Bureau to be an accurate representation of the taxpayer's Greater Boise Auditorium District tax liability for the period March 1, 2009, through February 29, 2012. This decision reflects the

auditor's adjustment to the amount asserted in favor of the taxpayer, lowering the tax from \$542 to \$523 and recalculating the interest accordingly.

The Commission found the addition of interest appropriate per Idaho Code § 63-3046, and has updated interest through March 31, 2013. It will continue to accrue at the rate set forth in Idaho Code § 63-3045(6) until paid.

THEREFORE, the Notice dated April 20, 2012, is hereby APPROVED, in accordance with the provisions of this decision, and is AFFIRMED and MADE FINAL.

IT IS ORDERED and THIS DOES ORDER that the taxpayer pay the following tax and interest:

<u>TAX</u>	<u>INTEREST</u>	<u>TOTAL</u>
\$523	\$55	\$578

DEMAND for immediate payment of the foregoing amount is hereby made and given.

An explanation of the taxpayer's right to appeal this decision is enclosed.

DATED this _____ day of _____ 2013.

IDAHO STATE TAX COMMISSION

COMMISSIONER

CERTIFICATE OF SERVICE

I hereby certify that on this _____ day of _____ 2013, a copy of the within and foregoing DECISION was served by sending the same by United States mail, postage prepaid, in an envelope addressed to:

[Redacted]

Receipt No.
